UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: PB LIFE AND ANNUITY CO., LTD. AND RACHELLE FRISBY AND JOHN JOHNSTON, AS JOINT PROVISIONAL LIQUIDATORS, Debtor.	Case No. 20-12791-lgb New York, New York April 14, 2022 10:05 a.m. - 12:01 p.m.

AP: 21-01169-LGB - UNIVERSAL LIFE INSURANCE COMPANY VS. GLOBAL GROWTH HOLDINGS, INC. ET AL

MOTION FOR LEAVE TO AMEND THE COMPLAINT

- A P E A R A N C E S -

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(Proceedings recorded by electronic sound recording)

THE COURT: Good morning, this is Judge Beckerman. Court is now in session. I'm going to go ahead and call the case and when I do, I'm going to ask for attorneys to please put their appearances on the record. And when they're speaking, I will also ask you to please identify yourself for the record. May I have appearances of counsel, please?

MR. CAMERON: Good morning, Your Honor, this is Clinton Cameron on behalf of the plaintiff, Universal Life Insurance Company. I'm here today with my colleagues, Meghan Dalton and Courtney Logli.

MR. PACE: Good morning, Your Honor, this is Jared Pace of Condon Tobin Sladek, on behalf of Greg Lindberg and other defendants. They're all identified in our filing at ECF 168.

THE COURT: Thank you.

MR. FRIEDMAN: Good morning, Your Honor, it's Peter Friedman of O'Melveny & Myers, on behalf Morgan Stanley Senior Funding, joined by my colleague Lauren Wagner.

MR. HALEY: Good morning, Your Honor, Peter Haley for defendant, Aspida Financial Services LLC.

THE COURT: Okay. Next?

MR. O'BRIEN: Good morning, Your Honor, Liam O'Brien of McCormick & O'Brien on behalf of defendant, Hutchison LLC.

THE COURT: Okay.

MR. HELLMAN: Good morning, Your Honor, Jay Hellman,

Westerman Ball, Ederer Miller Zucker & Sharfstein on behalf of the 20 flowers defendants.

THE COURT: Next?

MR. ORENGO: Good morning, Your Honor, Luis Orengo, Jr., with Carlton Fields, P.A., on behalf of Atlantic Coast Life Insurance Company, and Sentinel Security Life Insurance Company.

THE COURT: Okay.

MR. KAJON: Good morning, Your Honor, Nicholas F. Kajon of Stevens & Less on behalf of the joint provisional liquidators for the debtors.

THE COURT: Any additional appearances of counsel?

(No response.)

THE COURT: Okay. So, the way that we're going to proceed this morning is a little different than the way I normally conduct hearings, but it has to do with a couple of things. One, we have a lot of parties. And second of all, I have some time constraints on my time because I have other hearings this afternoon. I normally put limitations on arguments, but today I'm actually going to. So, counsel for the plaintiff is going to have 30 minutes for the opening argument. Each of the defendants and those are the only parties I'm going to hear from today, the plaintiff and the defendants who filed papers.

So, each of the defendants who filed papers will have 10 minutes each for their arguments, and then the plaintiff will

have 20 minutes for their response. So, that's how we're going to proceed. And if parties who are defendants want to cede time to each other, I'm okay with that. It's just in total, we're not going to have more than 50 minutes of argument from the defendants in total. I know there is some cross referencing of arguments, and I'm completely okay with that. I just want to make sure the parties understand. And with that, I'm going to turn the podium over to Mr. Cameron again.

MR. CAMERON: Thank you very much, Your Honor. I will do my best to be succinct and less than 30 minutes. The motion before the Court today, Your Honor, is a motion for leave to amend to file a second amended complaint on behalf of my client, Universal Life Insurance Company. Generally speaking, motions for leave to amend do not result in a lot of briefing and that's because it's a fairly simple one. The controlling standard is set forth at Rule 15(a)(2), which says that leave to amend is to be freely given. Likewise, the 2d Circuit (inaudible) to the same affect that the Court should not make a probing inquire into the merits of the case in deciding whether or not leave to amend is proper.

So, if you look at our papers as an example, we cite the Court to the 2d Circuit's decision in the **Block** case that talks about that leave should be given except in extraordinary circumstances where there is either undue prejudice or bad faith. Unless I'm mistaken, I didn't see anyone alleging that

we were engaging in bad faith. And so, really the standard then is, is there undue prejudice. I would submit that that's simply not the case. The reason that we are filing a second amended complaint in the first place is that the defendants complain that they did not have adequate information about the nature of the claim against them in the facts that were pled in the first amended complaint in order to formulate their arguments. So, we took that (inaudible). I respectfully do not agree that that was the case with respect to that first amended complaint, but then worked very diligently with counsel for the other defendants to try to collect information, so that we could supplement and be more specific with respect to the transactions that are involved here. That is the core of what the amendments are in this case. We have dropped some parties; we have added some parties on the basis of the information that we were provided. And I think the prejudice issue has to be viewed to the prism of the particular circumstances of this case.

My client is a beneficiary of a trust that is created in order to have its reinsurer, PBLA, have assets available to secure the payment of its obligations under a reinsurance agreement. Shortly after the time that we entered into the contract with PBLA in 2017, there was a burst of activity of taking assets out of the trust account and reinvesting it. That burse of activity principally took place by taking the money that was held in the trust account where there was legal title

on the part of the trustee, which initially was Wilmington Trust, and subsequently, became BNY Mellon, and now is TMI. The trustee then transferred the assets for the purposes of making investments to PBLA, and then PBLA took that money and engaged in a whole litany of different corporate transactions.

Principally, those transactions involved taking money that came from the trust, then was transferred to PBLA, and then PBLA took that money and invested it in special purposes vehicles that were created by Lindberg as an intermediary between those entities and what I have referred to in this case as the OPCO or the operating companies, which were the actual recipients downstream of the funds, and then used them for whatever corporate purpose they have.

So, what we have is a circumstance where the money leaves the trust, goes to PBLA, goes to a (inaudible) SPB that is created with -- ultimately to an operating company. My client had very limited information about those transactions because it was simply overseeing what was going on from afar as the cedent in a reinsurance transaction where it expected PBLA to pay its claims. Then said to PBLA, you can invest funds in the way that you see fit as long as you understand that if you don't meet certain reserving requirements, usually 102 percent of what we have to hold to protect our policyholders, we'll watch what you're doing, but we aren't intimately involved in it. We're not directly involved in the transactions.

So, the information that we had at the outset of this matter was quite limited and remains quite limited today because we're simply in the role of a beneficiary of the trust and cedent in a reinsurance transaction. We took the information that we were able to get without discovery and assembled it to the best of our ability to identify where this money went.

Now, the reason that we have claims against all these parties is that what was going on in this case is that the money was being funneled out of the trust into PBLA, and then sent off to these other entities beyond the reach of my client. And so, what we have here today is we're chasing hundreds of millions of dollars that have gone around the globe as a part of a scheme in order to enrich Mr. Lindberg and his corporate entities. Hundreds of which are involved in this transaction, or the (inaudible) transactions, if you will.

So, what we did initially was to identify where those funds went to the best of our ability to take those defendants and name them as recipients of fraudulent transfers. And then provide the information now in our second amended complaint that we have from the bank records and other corporate records to identify who received what, where, and when. That's exactly what the defendants said they wanted us to do. And now, we find ourselves having done what they said they wanted us to do, confronting a whipsaw of them saying, well, yes, we told you, you needed more information, but now we don't want you to

provide it. Now, we don't want to give you the opportunity to amend your complaint to put the very information in it that we said it lacked. That's simply not equitable. Moreover, it certainly doesn't defeat the right in effect to amend as long as it doesn't do so in bad faith or creating undue prejudice for defendants. The circumstance that I just described can't possibly be understood to be creating undue prejudice to the defendants.

Now, many of them who have filed papers have said, well, the reason you shouldn't allow this amendment is that it is futile. It is true that futility is one of the things that the Court should look to in determining whether or not to grant leave to amend. The caselaw in this area that's been cited typically comes from cases where plaintiffs have had numerous opportunities to plead their case, have lost on a Rule 12 motion, and then seek leave from the court to get another try after they've lost a Rule 12 motion. That's not the circumstance here. What we're doing is trying to take into consideration what people said, put in the specifics that we have, and then if they want to file a Rule 12 motion, that is certainly their right, and I expect we'll see them. But that isn't a reason not to give us a try at it.

Now, there are some issues that have been raised that could possibly constitute futility. As an example, the question of whether this Court has subject matter jurisdiction is

obviously a threshold issue that all courts, all federal courts have to take cognizance of all the time, indeed, sua sponte, if necessary.

The circumstances here though are that this Court has subject matter jurisdiction plainly. So, firstly, there is subject matter jurisdiction in this case on the basis of diversity of citizenship under Section 1332. I haven't seen a single paper from anybody challenging the diversity jurisdiction of federal courts over this dispute. My client is a Puerto Rican Insurance Company with its principal place of business in Puerto Rico. It's self-evident that the amount of dispute here exceeds the requisite jurisdictional sum. And none of the defendants are citizens of Puerto Rico. Therefore, there is diversity jurisdiction, which begs the question then, are we in the right court.

Well, if there isn't subject matter jurisdiction under Section 1334 of the Bankruptcy Code, well, there is under 1332, and if there isn't subject matter jurisdiction under 1334, then the answer is that we shouldn't be in this court because the order of reference doesn't apply, and we should be transferred to the District Court. Now, I don't think that's the case because I think that we do in fact have related-to jurisdiction in this case under 1334 and that the order of reference was properly used in this case to assign the matter to the bankruptcy court.

Why is there is here subject matter jurisdiction under 1334? Well, the standard in this circuit under the **Cuyahoga** case is that there has to be a conceivable effect on the estate. Now, the term "estate" in this case is a bit slippery in a sense that chapter 15 cases don't involve estates, so I think the proper way to understand it, which is explain further in the 2d Circuit in the **Parmalat** case is the effect on the foreign proceeding, the equivalent of an estate in that case. In this case, it's in Bermuda. And the bottom line under the conceivable effect test is, is there going to be something that matters in Bermuda in a way that money is distributed to creditors. And the answer here is plainly, yes.

So, we have an agreement with the debtor. Well, let's back up a little bit from there. We have a final unappealable judgment against the debtor in the Southern District for over a half a billion dollars. The debtor has agreed and dropped its appeal. So, there's no question that we have an allowed claim for over a half a billion dollars. So, it is self-evident that we are a very large creditor in this case and probably, unless something very unusual happens, by far and a way, the largest creditor. We have agreed that the amounts that we obtain as a result of the fraudulent transfer litigation will reduce that claim because of the way the mechanics of the reinsurance agreement works. The reason we have that claim for half a billion dollars is for breaches of the reinsurance agreement and

the failure to put in enough money into the trust. So, there is a relationship between these things so that when we recover money that should have been in this, that reduces our claim. If our claim is reduced, and nothing would make me happier than having our claim reduced to zero, there will be money to distribute to other creditors of PBLA in Bermuda. That self-evidently meets the conceivable effect test.

And the **Parmalat** case explains the way we should go about it to look at it the way we just talked about. **Parmalat**, you had a foreign debtor that had a 304 case before chapter 15 where it was pursuing claims against its auditor in the United States. In this case, Grant Thornton. One of the cases was filed in Illinois state court and removed, and then transferred to the Southern District. The 2d Circuit found that the court below had erred in remanding the case, and found in the course of that, that there was subject matter jurisdiction, because the amounts that would be recovered from that professional negligence would inure to the benefit of creditors. Likewise, in this case, the amounts that we recover in the fraudulent conveyance litigation will inure to the benefit of creditors. It's the exact same issue, the exact same effect.

Now, we find that there's an even more particular body of caselaw in this district and elsewhere showing that fraudulent conveyance claims in a chapter 15 case meet this standard. So, the cases that we have cited to the Court are the

Hellas Telecommunications case and the **Norske Skogindustrier** case, also in this district, and another case from Miami, the **British American Insurance Company** case. In each one of those cases, fraudulent conveyance claims were asserted in the context of a chapter 15 case. In each one of those cases, there were questions raised about whether subject matter jurisdiction was present. And in each one of those cases, the court properly found that there was subject matter jurisdiction. Because the amounts that could be recovered in connection with the fraudulent conveyance claims would inure to the benefit of the estate and to creditors. That's our exact circumstance here.

Now, some people have said, well, those cases are different because they involve circumstances where the foreign representative is pursuing the claims on behalf of the foreign debtor, and that's not what's going on here. And this feeds into the issue of whether or not there is standing. There is standing here and the way we know that is by looking at the operative law under which we are proceeding. One of the things the Court asked us to do and that we have done in the second amended complaint is to specify the potential state law that could apply with respect to our claims.

So, the two groups of statutes that we've pled come from North Carolina and from New York. Now, the reason that North Carolina could conceivably be applicable is that a lot of these transactions took place in North Carolina; Mr. Lindberg's

companies are rooted in North Carolina; and so there's a clear nexus to that state for a lot of the claims. The reason that New York would apply is that the trust in this case was in New York for some part of the time because it was held at BNY Mellon. Moreover, a lot of the transactions obviously involved entities that have operations in New York and use the financial markets in New York. In each one of those cases, what the law says is that the party that has the claim, is the aggrieved creditor, not the debtor. Why would the debtor have the claim? So, if you think about the pedestrian kind of fraudulent transfer case where somebody sells their car or their boat to their friend or their brother or their sister, of course that party is not the one who's going to seek to avoid that transaction when the creditors are aggrieved. That's the reason the statutes that are applicable here give that right to the creditor. That's the party that cares that there has been a fraudulent conveyance by the debtor to take assets outside of the reach of creditors. So, if you look at the New York State Debtor-Creditor Law, what it says is that the right to assert the claim is on behalf of a creditor. Likewise, under the North Carolina version of the UVTA, the right to assert the claim is on behalf of the creditor.

Now, in some circumstances people have talked about Bermuda and that gets us into some exotica that probably we'd all prefer not to be involved in. But even if we look at

Bermuda, Section 36(a) of the Bermuda Conveyancing Act says that dispositions, their term for transfer can be set aside "at the instance of an eligible creditor thereby prejudiced." So, it's my client, the aggrieved creditor, that has the right to pursue these fraudulent transfers. Indeed, I would submit it's probably the only party that has the right to pursue them because the debtor itself doesn't have the usual avoidance power that would be applicable in a chapter 7 or a chapter 11 case. And this failure to get out of the mindset of the usual chapter 7 or 11 case is the real issue here in standing. People act like we're in a circumstance where we're acting in the role of a committee and the debtor has the right in the first instance to pursue 548 claims. That's not the case where we are here. The Congress has forbidden PBLA from going and trying to use the Bankruptcy Code avoidance powers. That leaves it to us to have to do it. I wish I could rely on the debtor to go after these fraudulent transfer claims, but I cannot. So, that's the reason that we have standing.

Now, those are the two principal issues about futility that make sense for the Court to look at because, of course, you need to understand that you have subject matter jurisdiction, and of course, you need to understand that there's some reason that my client should be the party proceeding here and looking at claims. Then we really get into the weeds after that on the futility arguments.

The principal argument that's made by some parties in different ways is that our claims are not within the statute of limitations or stature of repose, or you pick which one that they wanted to argue. The fact of the matter is the applicable statute of limitations (inaudible) New York CPLR 213, which is a six-year statute. Nobody has argued that we have claims that accrue more than six years prior to the time that we filed either the first amended complaint or now, the second amended complaint.

There is a lot of talk in the papers about using the borrowing statute or whether or not there's a substantive statute of repose provided by another jurisdiction. This is really in the weeds and stuff that honestly probably will have to rely on discovery in any case because it turns on choices of law and where things happened that are simply not in the complaint. But let's assume for the sake of our discussion that the borrowing statute applies, and you use the statute in North Carolina. It's four-year statute for fraudulent transfer claims. We're well within it for the vast, vast majority of these (inaudible) regardless of whether or not the Court were to apply any discovery rule. If the Court were to apply a discovery rule, those very few transactions that took place earlier than four years from the time we filed our complaint, would also be within the statute.

Then there's some discussion about whether we pled the

claims with adequate specificity, the Rule 9 issue. What we did is what people asked us to do, was to plead the time, place, and amount of the transactions. So, for most of the defendants that means we have a paragraph or two that describes what happened. Some people take issue with the fact that it's done in a paragraph or two. I don't understand that. I don't know what we would have to add to that. If we say a transfer took place on this date, in this amount to this party, what more could we provide? What more would be relevant?

We're not talking about the fraud on behalf of a defendant, we're talking about fraud, in this case is a term of art because we're talking about fraudulent conveyances, on behalf of the transferor. And so, the courts in this circuit have said, well, in circumstances where we're talking about fraudulent conveyance and we're talking about claims that are being asserted by somebody who wasn't involved in the transaction, usually a trustee, we're not going to require the kind of specific pleading that some people want. And we're certainly not going to require specific pleading as to the mental state of the transferor. I don't even know what it would be other than to say that the transfers were made with the intent to defraud, hinder, or delay creditors, which is exactly what the complaint says.

I think that covers what I'd like to. And I am mindful of the Court's time issues, and I think I have about

nine minutes left which I would reserve for reply if I may. Obviously if the Court has questions, I'm happy to answer them.

THE COURT: And I do, but that's fine, you can reserve your nine minutes, I'm fine with that.

MR. CAMERON: Thank you very much, Your Honor.

THE COURT: Okay. So, first question, how do you differentiate between argument about whether the trustee on behalf of the trust should actually be the party bringing this action versus ULICO? What's the basis for ULICO having that standing as opposed to the trustee on behalf of the trust since it's the trust that was defrauded? I understand your judgment is based on your contract with PBLA, and that's clear why ULICO would have a right because there's a signatory to the agreement, and then it was breached, and the arbitrator found that. I understand that. But in terms of this action, why is it ULICO that's bringing this and not the trust? And how does ULICO have standing to do that?

MR. CAMERON: Of course. So, as I know the Court is aware, the trustee itself is not a juridical entity, it's simply an account. So, the trustee holds legal title to the assets in the trustee, but only in a ministerial-type capacity. The equitable title to the assets is held by the beneficiary. In this case, my client. So, even if we start with the premise that it was the trust, the assets or the -- well, this gets back to the problem of, it's not a juridical entity. Who was

actually injured? The party that owned the assets is who was injured in the context. And my client is the beneficiary of the trust, it has equitable title to the assets, and legal title is held in the name of the trustee only.

Now, in any case, we're the creditor here of PBLA, not the trustee and not the trust. Because the trustee doesn't have a claim against PBLA, it's my client that does because we're the aggrieved party. Which is why, when we go back to the language in the statutes in the New York State Debtor-Creditor Law and the North Carolina UVTA it says, it's the aggrieved creditor that is the only party that has the right to bring a claim, and that is my client.

THE COURT: Okay. With respect to the subject matter jurisdiction issue, if I discount the settlement agreement, which I think I have to under the rules of what I'm allowed to look or under conceivable effect, explain to me how there's any offset rights or otherwise? We've taken a look at both U.S. law and Bermuda law in this and don't see it in the court, so the way that I'm looking at this, which might be wrong, and certainly is probably informed by my chapter 11 experience, I'm sure, in addition to my chapter 15 experience, is that while we have a statute that requires that no one can get paid more than 100 cents, the way I'm looking at this is, I can't consider your agreement, there wasn't anything under the statute that would allow for offset, either U.S. statute or Bermuda under the set-

off rules, and therefore, the only way I can get conceivable effect is if I posit that the recoveries will be such that I get into the issue of your client being paid more than 100 cents on its claim, where you'd have a cutback occurring in the Bermuda estate. What am I missing?

MR. CAMERON: Okay. So, I understand the Court's point about the settlement agreement and so for the purpose of my answer, we'll disregard that all together. So, the nature of our claim, which is set forth in the judgment in the Southern District and in the reported cases about it, is that my client brought an arbitration claim saying that PBLA had breached the reinsurance agreement by not providing adequate assets in the trust. A panel found that we were entitled to a provisional remedy of having money deposited, and that didn't happen. We took that arbitration award, had it confirmed, and it became a final judgment, and that it's no longer appealable. I'm sorry if I'm going through things you already know.

The nature of our claim then is that there is an inadequate amount of money in the trustee. Well, if we succeed in clawing back this money, and go back to the state of affairs as it was as of July 6, 2017, that won't be the case anymore, because there was an adequate amount of money in the trust when PBLA got it. What happened is that there had been a prior reinsurer where we had put these good quality assets into a trust. That arrangement ceased because the parties wished to

discontinue it. We found a new reinsurer in the context of PBLA. We took the assets that were already in the trust and transferred them pursuant to the new reinsurance agreement and the trust agreement and said, okay, here's where you guys start, manage it well, and you'll do well. You can take the money that's in excess of the amounts, that we need to have our reserve and requirements. If you don't manage it well, you're going to have to put more money into it.

So, the circumstance that we had here when we went to arbitration is that they hadn't managed well and that there weren't enough assets in the trust and that's what the panel found. And so, they needed to put more money in. They didn't do that. Now, that's all because of these fraudulent transfers. That they took these perfectly good assets that we had, liquidated them, turned them into cash. PBLA took that cash then and invested it in things called "Flowery Branch" and Yellow Lotus, SPB's that had no economic substance whatsoever, some operating company, often offshore with opaque financials. So, if we undo all that and put the money back in the trust where it should be, our claim will obviously go down. Because our claim is based on the fact that there is insufficient amount of money in the trust.

THE COURT: Okay. Mr. Cameron, I'm going to stop you there. Technically, this action is not filed by the trust, it's filed by ULICO in its capacity as a creditor. If you get a

judgment, that money goes to ULICO. There's nothing about a judgment that would happen in this that will require that money to then go into the trust but for your stipulation of settlement agreement with the debt with the foreign debtors. So, if I can't look at the stipulation of settlement, which I don't believe I can because it was entered into after the date when this action was commenced, what's the basis for me thinking that that's going to end up in the trust? No disrespect, but ULICO is a large insurance company; there's nothing about it that will require that if it was able to bring fraudulent transfer action, having to put that in the trust.

It true it might trigger a similar type of statute if it exists in Bermuda to the one that we have in the United States, that you can't get paid more than 100 cents on a claim, and I get that, but there's nothing else about this action that will require those funds to go back into the trust if you're successful. Because this is a fraudulent transfer action not being brought on behalf of the trust but being brought on behalf of ULICO. So, explain to me why that's going to end up in the trust and what's the basis for that at all in connection with the fact that this action isn't brought on behalf of the trust.

MR. CAMERON: Sure. So, no one is contending that we would have the right to get $524 million, plus interest and have all of the trust assets adequately in the trust. That would be a double recovery. That is not permitted under the law of

Bermuda as I understand it. It certainly wouldn't be permitted under the laws of the United States or any other jurisdiction I'm familiar with. So, our judgment amount will necessarily be reduced to the extent that there's more money in the trust. So, by getting the money to us, our claim goes down. That means there's more money to go to creditors. That's why there is a conceivable effect here. That's really the bottom line of it because we can't both collect on the judgment and insist on the full amount of the trust monies being present because that would in fact be a double recovery.

THE COURT: So, let's talk about your diversity of citizenship argument.

MR. CAMERON: Sure.

THE COURT: So, let's just hypothetically say, I don't find that I have subject matter jurisdiction, or I do not have it, what you're suggesting to me, I think, if I understand what you're arguing, is that this could proceed in the District Court. As you know, when something is filed by me, if I find I don't have jurisdiction, I don't get just to transfer the matter to the District Court. There would have to be a motion to withdraw the reference and the District Court would have to decide if it thinks there's diversity jurisdiction such that it would remove it in light of the fact that I found that there's not subject matter jurisdiction based on § 1334. So, is that what you're saying would happen here? Because I don't get to

just send things to the District Court. Sometimes I would really love to do that, but that's not what our statute says.

MR. CAMERON: Sure. Well, if there's not subject matter jurisdiction under 1334, then this district's order of referenced was never implicated. And I made a mistake when I put the caption on it that I did. Which would certainly be my mistake for that, for which I would apologize. But the order of reference is simply then inapplicable then. Because § 157 only allows orders of reference in circumstances where jurisdiction is based --

THE COURT: And that would require me to dismiss this action, and you would have to reconstitute it in the District Court, correct? Because you're pointing out that there's no reference to be withdrawn in that circumstance, which is the way I was looking at it too. I don't disagree with that. I don't think there is a reference if it doesn't fall within the language of the reference. To me that means that this litigation would have to be dismissed before the Court and you would be free to file it anywhere else, North Carolina, state court in New York, the District Court on diversity. But it isn't something that can go back up on a withdrawal of the reference. That's why I was asking the question because I don't see that either.

MR. CAMERON: I agree that you wouldn't withdraw the reference because I think that the order of reference in the

first instance would be inapplicable, and so, it simply would have been filed in the District Court, we'd put a new caption on it, the clerk would put us on the wheel, and we would get an assignment in the District Court. That's what I think would be the right thing to do.

THE COURT: Okay. Understood. So, let's talk about some of the other arguments that were raised with respect to the pleading. I appreciate that you have provided no particularity with respect to the statutes in your pleading, but I note that there are still some claims, where the statute wasn't specific, where it is really a matter of state law that would have to be applied. So, specifically I'm focused on unjust enrichment and conversion claims. constructive trust is a little dicey because that can be a state law claim, or we actually do have some federal rules on constructive trust technically. I was involved many years ago, early in my career, on one of the main cases on that one, with somebody had to look at, how does that happen. So, it does exist under federal common law, a concept of constructive trust, in addition to state court. So why have you not pled with more particularity as to what states those claims would apply because the facts that you're using are similar, they're all the same facts that you've alleged with respect to at least many of the things that are the constructive fraudulent transfers. I understand there are differences with the actual fraud claim and the actual fraudulent conveyance claims, hinder,

delay, defraud creditor claims, but why is there no statute, estate law applied with particularity on those?

MR. CAMERON: Sure. So, those claims arise under the common law, and as a consequence, there's no particular statute that you would point to. we understood why people wanted to understand what statute we were talking about with the right emanates from a particular statute within New York and North Carolina. You know, I hoped that that would be the limit of the potentials, but unfortunately, it may be broader than that.

When we start talking about the estate common law, and as you rightly point out, federal common law doctrines, I think it's not conventional to plead choice of law in a complaint for a variety of reasons. Now, as a practical matter, what I think would make sense is that, to the extent you should you choose the law of New York or North Carolina, say for a transaction with respect to fraudulent conveyance, I think you probably would also get the same law of estate applicable. That is, let's say that you had a New York State Debtor-Creditor Law statute applicable to a particular transaction, I think the law you would likely look to in that event for the unjust enrichment or the constructive trust or claims of similar ilk would probably be the law of New York. However, the reality is that choice of law is a complex area, and it turns on the facts of each individual transaction. So, I think it would be very difficult to plead the choice of law issue with respect to each

of these defendants at this juncture of the case. And I respectfully, do not think that that's what's required under Rule 8.

THE COURT: Okay. All right, those are my questions. Thank you for answering them. All right. Who would like to go first among the defendants?

MR. FRIEDMAN: Your Honor, it's Peter Friedman, may I start my 10 minutes for Morgan Stanley?

THE COURT: You may.

MR. FRIEDMAN: Thank you, Your Honor. So, Your Honor, I want to start by pointing to our opposition to the motion to amend and the four cases we cite from the 2d Circuit that say futility absolutely is an appropriate basis to deny leave to amend. And there has been prejudice to Morgan Stanley. We identified the deficiencies in August of last year in a letter to the court, and were forced to wait through a full round of motions to dismiss briefings Before the last minute. Our issues were obvious, and the plaintiff did nothing to correct those deficiencies at any time before, what I would describe, as the very last minute on the eve of the last year.

Your Honor, I want to identify a few other important issues with respect to subject matter jurisdiction. In effect, I think what they're saying is, that anytime a claim against the estate could be reduced, that claim can give rise to related jurisdiction, but that's clearly not the law, otherwise, any

claim against a third party where there's contribution would give rise to related jurisdiction, which just isn't correct.

On the standing issue, Your Honor, I want to make the point that there are two standing issues. One is the statutory standing issue for fraudulent transfer, which I understand that they assert an independent right. But with respect to unjust enrichment and constructive trust, those are not claims that a third party can bring. Those belong to either PBLA or the trust. They have not cited a single case that gives the right to a third party to bring those, and I think the traditional rules of STN standing do apply there, and they've completely failed to comply with that.

Your Honor, the next point I would make is with respect to fraudulent transfer. And the prospective fraudulent transfer, and specifically with respect to Morgan Stanley, the initial complaint both said too little and too much. It said too little because there is nothing in it about what Morgan Stanley had done. But what it said that was too much, Your Honor, really, if at all times, it's been in the complaint, first amended complaint, and the proposed second amended complaint. it says, Morgan Stanley received funds transferred from the trust, not PBLA, before such funds were transferred to various Lindberg affiliates, entities, or individuals. And then, at all times, PBLA, a known affiliate of Lindberg, retained possession or control of the trust proceeds that were

transferred from the trust. So, I guess now, by identifying something, have cured the too little issue. But they've just pled too much. They've pled themselves into a corner they can't get out of by saying that Lindberg retained possession and control of the trust proceeds that were transferred from the trust. And even what you heard this morning, that all of those funds were part of a scheme that the money wound back up outside the hands of any of the defendants. Morgan Stanley never possessed or obtained funds for its own benefit under **Lyondell**, under **Mervyn's** from Delaware. Those cases establish that if you're a mere conduit, **Kristy v. Alexander** in 2d Circuit, one who facilitates the transfer of funds, does not exercise sufficient dominion and control, and is not an initial transferee that can be held liable for fraudulent transfers.

They claim, oh, we've alleged you're an initial transferee, but **Kristy v. Alexander and Alexander** and the **Finley, Kumble** bankruptcy demonstrates that my client is not an appropriate initial transferee who can be alleged to be liable for a fraudulent transfer. So, I don't think that's so "in the weeds" that that can't be addressed now. On its face, it's glaring and it's fatal and there's no way to remedy it.

I would also note we allege, certainly for New York law purposes, Mr. Cameron may be unfamiliar with it, but there is substantial caselaw that says, where you're pleading actual fraud, the intent of the transferee is important. It has to be

alleged and there actually is no such allegation. And I think that leaves into the unjust enrichment issue.

When the Court (inaudible) in January, I don't want to over presume, but the Court certainly expressed skepticism with respect to intent-based claims as to our client, and those were not remedied in any way. Unjust requires a fiduciary or other close relationship, it requires bad conduct, it requires something unjust. And there's just nothing even remotely like that in these allegations.

I think the remaining point I would make with constructive trust is that it is a federal doctrine, certainly one that we've all dealt with extensively. What I would say it, it's a remedy, it's not a cause of action. Second, it has specific elements. It's flexible, but it's not so flexible that you can't note the glaring absence of any of them here. ULICO says Morgan Stanley waived the right to address this, which is not true. In our opposition, we specifically referred to our motion to dismiss briefing, pages 22 through 26. And our proposition in our opposition to the motion to amend was, you can't have a constructive trust where you acknowledge in your complaint that there is no race in the hands of the defendant.

The allegation here is that the money went to Lindberg and his affiliates, not Morgan Stanley. By definition, you can't have a trust race in that circumstance then, because the money isn't with the purported defendant. And we actually cited

a case in our initial motion to dismiss, the **Dreyer** case, from Mark Dreyer's bankruptcy. And so, the idea that we waived it is wrong, and the idea that they can meet any of the elements of a constructive trust is equally wrong. So, Your Honor, in our view, this is an absolutely futile complaint.

The last point I would make though, we can proceed to an additional argument on the motion to dismiss if necessary. Frankly, I think the Court can address the issues on the papers, it's been briefed so many times. I would request that we actually be spared having to expend more money on the motion to dismiss. What I would say is, in the hopefully very unlikely event that there is permission to amend, that any amendment come in the form of separate complaints against each defendant. I don't know whether ULICO didn't want to pay fees for filing separate adversary proceedings, but I've never seen anything like this where there's not a common nucleus of facts for recipient of transfers, but you just lump them all together. If there is an amended complaint, and the Court reserves on the futility issue, we would obviously motion to dismiss it, and we don't want to have to wait for everybody else to be dismissed, for them to appeal it if we prevail on that. So, I guess that should be ordered, like I said, in the hopefully very unlikely event that are permitted to amend, that they file separate complaints. That's all I have, unless the Court has any questions for us, Your Honor.

THE COURT: No, thank you, Mr. Friedman, I appreciate that. I don't have any questions.

MR. FRIEDMAN: Thank you.

THE COURT: Who would like to go next?

MR. PACE: Your Honor, may I go? Jared Pace from Condon Tobin?

THE COURT: Yes, Mr. Pace.

MR. PACE: Thank you, Your Honor. I'll set my timer here. We make a lot of arguments in our brief about why this case his futile, and why it should be dismissed, I just want to focus on why for the sake of time, and that's the standing issue that the Court brought up in its questions to Mr. Cameron. As the Court correctly pointed out that this is a case to pursue trust assets, the trustee has the right to do that, not the beneficiary of the trust. I heard Mr. Cameron say that the trust isn't an actual entity, it's an account. And I didn't see any reply to our argument on this point in ULICO's report, but I don't think there's any basis for that. I don't think there's any basis to disregard the trust as an entity, and I think Mr. Cameron even admitted that it holds legal title to the assets that they're trying to recover here.

The law is clear under trust law that the trustee has to bring a claim to recover trust assets. I think that they make the argument on the other side that this isn't necessarily a recovery of trust assets; I think the problem that runs into

is the language of their second amended complaint itself. We can't go beyond the complaint at this point, we're constrained to the four corners of it, and whatever documents are referred to it. And it says very clearly in the opening paragraph that "this case arises out of … the transfer of hundreds of millions of dollars of assets from a trust." That's it.

Paragraph 315 also says, each of the voidable transfer defendants received transfers at the direction of PBLA from the trust. There's simply no escaping the conclusion that they're trying to recover and trying to avoid transfers from the trust. Claims asserted to recover those have to be brought by the trustee. There are occasions under the law where a beneficiary could bring those claims, but you've got to plead that you may demand on the trustee to bring the claims and the trustee improperly refused. it's like a derivative suit. We explain that on pages 3 to 5 about brief. They didn't do that, and if they did, they didn't plead it, and we're constrained to the pleadings here. They didn't plead their standing, so it's got to get kicked out on that basis alone.

There's another component to the standing argument though, and that is under the fraudulent conveyance statutes that they're trying to recover under. Under those statutes, you have to be a creditor of the transferor. All right? They're conflating the trust with PBLA. The trust is not PBLA. ULICO is a creditor, by its admission, of PBLA. The transferor in

this circumstance is the trust. ULICO has not pled that it's a creditor of the trust. And therefore, under the fraudulent conveyance statutes it's trying to recovery under, it doesn't have standing a creditor. And I'll just quote one of the many cases we cited in our brief out of the Southern District of New York. It's **Lippe v. Bairnco Corp.**, 225 B.R. 846 (SDNY. 1998), and it says, " … only creditors of the transferor are entitled to assert claims under the NYDCL for fraudulent conveyances." North Carolina has the same statute essentially as New York.

And to illustrate this point, a problem with this conflation, and that's what it is, it's a disregard by ULICO, the trust, as a separate and distinct entity that the law recognizes it is. In some cases, they conflate the trust with themselves. In some cases, they conflate the trust with PBLA, but they're distinct. They're different. And to illustrate the problem, I think you can look at one of the defendants in this case, Sedgwick LLC. So, in this case, ULICO is trying to avoid a loan to Sedgwick LLC owned by the trust. All right? Separately, the JPLs on behalf of, first the trustee, and then o behalf PBLA of the grantor of the trust by seeking to enforce that same loan against Sedgwick LLC in a different jurisdiction. That's happening. So, you've got all three parties to the trust, ULICO is the beneficiary, the trustee, as the trustee, and PBLA as the grantor, pursuing different remedies in different jurisdictions against the same defendant on the same

loan transaction. They cannot all have standing to do that. That just can't be the case. And I think the law is clear that ULICO does not.

There are a lot of other arguments as to why this case needs to go away now, the standard, I don't think is really in dispute. What's going to happen is, if the Court allows them to amend their motion, you're going to see a bunch of motions to dismiss again, and the only question of the standard at this point is, would that be a waste of time? Do we know enough at this point, based on their current draft of the pleading, to know that that would be a big waste of time? I think on this issue in particular, the standing issue, we know that would be a waste of time. The jurisdiction issue as the Court noted as well, I think is another obvious one to kick this out. I'll stand on our brief as to all other arguments. I'm happy to try to answer any questions the Court may have?

THE COURT: Thank you, Mr. Pace. No, I don't have any questions for you.

MR. PACE: Thank you, Your Honor.

THE COURT: Right. Who would like to go next?

MR. HALEY: Your Honor, Peter Haley for the defendant, Aspida. With the permission of the Court?

THE COURT: Mm-hmm.

MR. HALEY: Your Honor, much like crying in baseball, there is no diversity jurisdiction in bankruptcy. And although,

the Court's earlier colloquy with plaintiff's counsel and their concession seems to have resolved that matter, the fact that the plaintiffs leads with that in their reply memorandum, I think bespeaks the weakness of the subject matter jurisdiction arguments in this case, which seem to provide overall, the easiest past to the exit for all concerned. The plaintiff is then left with the argument that this is a related-to matter under 1334 and its reliance on the conceivable effect arguments first articulated by the 3rd Circuit in **Pacor**.

This is an adversary complaint that's nine months old relating to a chapter 15 proceeding that's now more or less two years old filed initially in 2020. In concluding the argument about the conceivable effect, the plaintiff ends on page 8 of its memorandum with the sentence, "If it should recover something under those circumstances, reducing the claim will increase the assets that can be used to pay other creditors to the extent any exists." It seems apparent, I believe, to all concerned and hopefully to the Court that the reduction of this $5 million claim, even if it could be legally reduced, as the Court has observed is likely not the case, isn't going to have a conceivable effect on other creditors.

This is a liquidation proceeding; there is no corpus that's going to be diminished; there is no likelihood that there will be distributions to other creditors that will be materially improved by either the whole or partial reduction of this claim.

Subject matter jurisdiction is something that the plaintiff bears the burden on. And now nine months in, the plaintiff must demonstrate to the Court and to the defendants that such jurisdiction exists. The fact that one could construe a hypothetical isn't sufficient. The 2d Circuit is clear that in cases where the connection is so small or tenuous, the court can appropriately elect not to exercise subject matter jurisdiction where there's nothing real going on here, and that's certainly the case. The one exception to that that the Court alluded to in an earlier status conference is, if the property that the plaintiff is pursuing is somehow property of the estate or has some connection to the estate, then perhaps subject matter jurisdiction can be established.

Here, where the plaintiff is clear that the funds that it seeks to recover are funds that were distributed from the corpus of the trust, in paragraph 122 of the second amended complaint, they articulate the accounts from which these amounts were distributed. They're all trust accounts. The debtor doesn't have any interest in these funds, and the plaintiff is clearly not pursuing them in a way that's going to inure to the benefit of any party, other than the plaintiff. That being the case, there is no benefit either in reality or either under any conception by which the other parties to this bankruptcy proceeding, this foreign proceeding will benefit from the plaintiff's actions here. And as such, the matter fails the

related-to test under 1334, and the Court lacks subject matter jurisdiction.

On a defendant-specific argument, Your Honor, Aspida has also raised the fact that in its case, this asset, the entity that's the defendant here, now known as Aspida Financial, was something that was acquired through a Michigan rehabilitation proceeding that was started in 2019. Aspida paid $5.5 million to acquire the asset. When it did so, it received a free and clear order from the Michigan court in which the Michigan court said that it was receiving this asset free and clear of all claims in interest. The plaintiff's only response to that is, well, maybe the Michigan court didn't have jurisdiction. Or maybe we didn't get notice. But respectfully, those are all arguments that belong in the Michigan court. 1334(c), which allows a court to exercise permissive abstention and the Federal Common Law Doctrine, known as the Burford Extension Doctrine, makes it clear that in instances where there is a state regulatory scheme, the court is called upon to construe state law and subject matter jurisdiction traditionally lies with the state court, that the court should abstain from exercising jurisdiction.

The plaintiff itself on the first page of its motion for leave to amend says, insurance is something that is a subject of state regular law. The defendant, Aspida, would concur and argue as it has in its papers in this instance, that

this is a matter in which the Court should properly exercise its rights of abstention and as such, there's no reason for the second amended complaint to proceed against Aspida, even if the Court should find subject matter jurisdiction on the larger issues.

I would note that with respect to the connection of the trust corpus to the foreign estate, that the position of the joint provisional liquidators seems to have changed a little bit in a recently filed pleading in the so-called second sale motion in the main proceeding, Docket Number 173 at pages 19 to 20. The joint provisional liquidators seeking to avoid the court's constant supervision over the disposition of certain classes of assets makes it clear that the court doesn't have jurisdiction over assets which are not directly held by PBLA, and as such, cites **Parmalat** to the effect that there's no conceivable effect to the bankruptcy estate for the disposition of affiliates, including trust assets. So, the subject matter jurisdiction which were articulated in our papers and have been argues by others as well, we believe should led the court to conclude that allowing a complaint to proceed further would be futile in this instance, and as such, deny the motion for leave to amend and dismiss the first amended complaint as it exists.

THE COURT: Thank you, Mr. Haley. I will just note for you, chapter 15 has some unique aspects. One of them is, there's no permissive abstention in adversary proceedings that

relate to a 15 case. I just had to rule on this very recently. There's a bunch of caselaw on this. There's only mandatory abstention or no abstention in the context of adversary proceeding that's related to a 15. So, if I did find I had related-to jurisdiction, I wouldn't be able to access or to utilize the permissive abstention, just so you're aware of that. It's a unique thing about chapter 15 and there were a bunch of issues about whether that also applies to adversary proceedings. But the majority of the caselaw says it does, that it related to a 15 and I have previously ruled to that effect as well in connection with Mobi litigation that was before me recently.

MR. HALEY: I apologize to the Court for that. I was aware of the first sentence of 1334(c) but was construing it to mean that it applied to the main proceeding and not the adversary proceeding.

THE COURT: No, there's actually caselaw on this in the 2d Circuit on this as well and other circuits. It's an interesting issue. I never encountered it myself in practice even though I did a lot of chapter 15's. And there's not a ton of caselaw, but there is some and a bunch in our district as well, including my own ruling recently.

MR. HALEY: Thank you, Your Honor.

THE COURT: All right. Mr. O'Brien would you like to go next?

MR. O'BRIEN: Sure. Thank you, Your Honor. Liam

O'Brien of McCormick & O'Brien for Hutchinson. I'm not going to address a lot of the jurisdictional issue because I think that's been very adequately covered, but I will start by saying that the plaintiff has not directly addressed the arguments specifically to Hutchinson that are set forth in our brief. he proposed 2nd amended complaint doesn't specifically allege any actual wrongdoing by Hutchinson which supports the legal claims that they're asserting against Hutchinson. It merely adds one substantive allegation regarding two separate cash transfers, while at the same time failing to actually note that the transfers occurred in the context of Hutchinson's involvement as legal counsel and Eli Global, entities purchased of an unaffiliated software business. The funds that were used to finance that acquisition of the unaffiliated business that were temporarily remitted to Hutchinson's trust account, and then they were distributed in accordance with the agreement of the parties to that transaction.

So, there's no specific wrongdoing alleged against Hutchinson. Hutchinson is not alleged to have shared any functions or affiliations or control with or by any of the other defendant entities. And as a result of that, the fatal pleading defects highlighted in Hutchinson's prior motion to dismiss still remain. The single allegation doesn't satisfy the requirements of a well-pleaded claim and we believe, just as stated n our prior motions, that they'll withstand a motion to

dismiss pursuant to the various rules. And I guess we should point out, even though I'm sure it's obvious to the Court, that ULICO has had ample time to gather information needed to substantiate their claims against Hutchinson and apparently has not been able to do so.

Turning to futility, given that the proposed second amendment complaint fails to state or include any allegations of wrongdoing with respect to Hutchinson, it will be subject to a motion to dismiss if leave is granted to amend and according to the law cited in our brief, the Court is not abusing its discretion if it denies leave to amend when it determines that the amended complaint, even as amended, would fail to state a cause of action. I will recite the caselaw that we identified in our brief, but just in summary on that argument, leave to amend should therefore be denied because it's futile.

Turning my attention briefly to the statute of limitations arguments, we argue that under CPLR 202, the courts are obliged to bar statute of limitations for a foreign jurisdiction where that statute of limitations period is shorter than the one under New York law. With regard to the voidable transfer claims that are asserted against Hutchinson under New York and North Carolina law, there's a shorter four-year statute of limitations under the North Carolina law, and so the deadline to file those claims against Hutchinson was in September of 2021.

Under the unjust enrichment, there's a three-year statute of limitations, both in New York and in North Carolina, so those unjust enrichment claims were required to have been filed on August 23, 2020 and September 6, 2020, respectively, with regard to the two transfers, and so leave to amend should be denied on that claim as well. And then with respect to the constructive trust, while the New York statute of limitations is six years, under North Carolina it's three years, and again, the time to file a claim is well passed as against Hutchinson.

So, for those arguments and the others articulated in our brief and that we referenced, the arguments made in other opposition briefs, we ask the Court to deny the motion to amend, at least with respect to Hutchinson. To the extent I have any additional time, I'll cede my time to any of the other respondents that need the time.

THE COURT: Thank you, Mr. O'Brien. Mr. Helman?

MR. HELLMAN: Yes, judge. Thank you. I'm just going to set my timer here. For the record, Jay Hellman, Westerman Ball, for the 20 flower defendants. Although now, it seems based on the proposed second amended complaint, 19 defendants because Somersworth has been omitted from the complaint.

I don't want to repeat everything that everybody else has said with respect to jurisdiction, but I do want to note two points. One is that it seems to me that ULICO has argued its way out of jurisdiction in this court. Despite the contention

that the reduction or potential reduction in the claim against the estate has some affect on the estate, the fact is and the law is, under **In re Holland** in the Southern District, and I can't believe I'm going to say this, dating back to 1989, way back, that in a proceeding involving non-debtors won't be found to be related on the ground that it will affect the distributions of creditors, unless that proceeding also involves property in which the debtor has a legally cognizable interest. We've heard from counsel today for ULICO that the legal title is held by the trust, and the equitable title is held by ULICO, which means that the debtor has no interest in those funds.

The second point, I want to make judge is the contention that this case is on all fours with **Parmalat**, which it's clearly not because here, ULICO is bringing the claim solely on behalf of itself. In **Parmalat**, the claim was brought in an attempt to recover damages that the plaintiffs contended were due to the respective bankruptcy estates in Italy and in Grand Caymans. It's not the case here, there's no contention that they're bringing this claim for the benefit of all creditors to bring money back into the estate for inequitable distribution, they want to bring the claim on behalf of themselves, so that they can keep all that money, and there are other cases that are consistent with denying related to jurisdiction on that basis. And I've recited those in my briefing, and I stand on the pleadings there.

I don't think it's getting into the weeds to argue statute of limitations because -- and I don't disagree with counsel on the Rule 15 standards, but courts have held that permitting amendments for the purpose of alleging claims that are barred by statute of limitations would be a nullity, and it only increases the cost of litigation. And that's really what we see here. First off, I set forth a couple of charts in my memo. The first one is the pleadings themselves with respect to at least five of the entities, that being Atkinson, Chrysanthemum, Epping, Hookset, and Ware have allegations that the transfers occurred more than four years before the complaint was filed.

With respect to which law applies, again, I think the complaint doesn't necessarily stand on any particular law. I don't think New York is proper, especially with respect to my client's law or North Carolina, who were affected by a transfer that was alleged inspired by or commissioned by Mr. Lindberg who is in North Carolina, who's subject to the North Carolina insurance regulations. And where the entity was residing in North Carolina, the transfer entities resided in North Carolina. So, I think North Carolina law applies. I think it's a statute of repose not one of limitations, therefore substantive therefore applies. But even if it didn't, as counsel for other defendants have raised with the court today, the borrowing statute under New York CPLR would apply, the shorter limitations

period. So, clearly, I think that those claims are outside not only the four-year limitations period under fraudulent conveyance claims, but also obviously for the three-year statutory periods for unjust enrichment and conversion. And thar probably holds true actually with respect to all defendants. There's a chart again in my brief which reflects all of those entities against whom claims for unjust enrichment and conversion were asserted. And the reasons why, based on the timing, those are outside the limitation periods.

There was an effort to add claims against certain of the other flowery defendants, if you will. That includes Blue Daffodil, Blue Violet, Dahlia, one transfer with respect Daisy, Geranium, Lilac, Macon, Red Begonia, Yellow Lotus, and 21 Yellow Sunflower. There were never any allegations with respect to any transfers as to those entities within either the first complaint or the first amended complaint. And as argued in my brief, judge, there is no basis to relate those back to anything because, under the law, each transfer is viewed as its own separate transfer. Its own separate claim that has to be made with respect to dollar amount, timing, and there's simply nothing in the first amended complaint that would allow a relation back in the second amended complaint with respect to those specific entities.

One point I wanted to mention that nobody has mentioned, which I find interesting, is that these claims are

all fraudulent conveyance claims, transfers of money where they say, no consideration, or bad actors, or what have you, but the bottom line is that all of these transactions, as I think is recognized by the JPLs, were subject to notes or securities transactions that were related to the transfers and there's been no effort to avoid those. I don't see how, and in my experience representing trustees for a long period of time, I've been subject to this. I don't see how one can avoid as fraudulent a monetary transfer without avoiding the underlying obligations that form the basis for those transfers.

And again, I cite in my brief applicable caselaw. I think counsel for ULICO tried to distinguish one of them, but they don't distinguish the rest of them which all hold, unless you avoid the initial underlying documentary evidence as fraudulent, the resulting monetary transfers cannot be avoided.

With respect to breach of fiduciary duty, I just want to clarify for the court with the position was there. I'm not sure if I made it entirely clear, and counsel may have been confused with respect to the argument. The point is that a company doesn't have a fiduciary duty to anybody. A company acts based on the conduct of its officers and directors, and those are the folks who have the fiduciary obligations. But those fiduciary obligations run initially to shareholders. It's only upon the insolvency of an entity that there's some obligation perhaps to creditors, but that requires a claim

brought on a derivative basis by those creditors. So, the point is twofold: (1) The companies here, my flowery defendants, don't have a fiduciary obligation to anybody. Perhaps officers and directors of those entities would, but the entities themselves do not. (2) The obligations of those officers and director to creditors would only come into play upon insolvency of the entities.

Now, that gets me two other points and then, I'm almost done. But one point is on insolvency. So, we assert, judge in our brief, and I don't see any allegations that rectified everybody's arguments before, which is, there's nothing in the complaint that talks about insolvency to support constructive fraudulent claims. There's nothing about books value, asset values. There's nothing except that these transfers created the insolvency situation, but there's no financial information to back that up. It's just a flat-out unsupported claim, which the Court doesn't have to take as gospel in connection with this motion or these motions.

Lastly, judge, I just want to make a distinction between the claims for actual fraudulent conveyance and fraud. There's nothing in the complaint, the who, what, where, why, when, how that deals with actual fraud under 9(b), so those claims should also be dismissed if the Court is inclined to exercise jurisdiction. I see my time is up and I appreciate the Court's patience. If the Court has any questions --

THE COURT: Mr. Hellman, I have a question for you.

MR. HELLMAN: Sure.

THE COURT: So, with respect to your second to last argument on the insolvency issue and the failure to plead without particularity, I guess my question is, is the judgment sufficient itself that was entered on behalf of ULICO against PBLA? Because what the arbitrator had to find and then the court had to confirm is that they had breached the agreement. And the agreement was that they had to keep a certain percentage of assets in the trust agreement in order to reinsure. And the arbitrator had to find that that was breached in order to then order them to put the money back, or to pay them that money because they hadn't complied with the reinsurance agreement.

So, I thought what you said, but I thought that, at least vis-à-vis the trust, which I guess gets into the whole trust-ULICO issue, I understand.

MR. HELLMAN: Correct.

THE COURT: But at least with respect to ULICO, I guess, the Court found confirmed the arbitration order finding there had been a breach. And presumably, the breach was that there wasn't sufficient collateral in the trust to support all of the claims of ULICO policyholders. And that's what had been breached and that's why there's a judgment ordering them to put in sufficient funds. That was what was breached. And that gets a little dicey because the claims here might be on behalf of the

trust, not on behalf of ULICO, although the action is brough by ULICO and not the trust. So, it gets a little dicey, I can understand. But at least with respect to ULICO itself, I suppose there is some evidence of the fact that there was -- and even with the trust, arguably, I suppose that there were insufficient funds in the trust and that was the breach. And that's why there had to be additional funds put in.

I think you can, at least, construe some kind of insolvency under the trust. I'm not sure that's true for ULICO itself though.

MR. HELLMAN: For PBLA or --

THE COURT: Yes.

MR. HELLMAN: I see where the Court is going. I think that is the issue that Mr. Pace had raised where they're trying to blur the lines between the trust and the debtor. Who made the transfer; where did it come from. Well, if it came from the trust, I guess we'd have to take a closer look at the decision in terms of what was in the trust at the time. Is there's insufficient funds to pay creditor claims -- were there creditor claims? Were there any insured claims? Or is it just, they found out that the investments were being made to entities that were related and they have an objection to that? It's not entirely clear in terms of the trust, but it's certainly clear in terms of PBLA, which again, I think the lines are being blurred between the trust and PBLA.

THE COURT: Okay. Thank you for that answer. All right. Mr. Cameron, I think it's your turn for a reply.

MR. CAMERON: Thank you very much, Your Honor. I want to actually start with this issue about the identify of what entity (inaudible). And what entities exist as juridical persons and don't. Okay? The concept of trust is an outgrowth of the common law of property. It is not a juridical person anymore than an estate is an juridical person. The trust cannot act on its own behalf in any way. That's why there's a trustee. The trustee holds legal title to the assets that are held in trust and is the only party then that can act in relation to the trust assets in relation to that specific trust. But the trustee has only a very limited property right in those assets. The trustee holds legal title, but the beneficiary holds the equitable title. So, it's the real party in interest for all practical purposes for the things that happen with the assets that are held in trust.

In this case, ULICO is the beneficiary of the trust, PBLA has a very scant property interest in those assets in that it has the right to take the overage of the amount of the assets to the extent their fair market value exceeds the threshold of what is required for the reserving on the reinsurance. My client has equitable title to some of the assets and PBLA has a highly contingent theoretical equitable title over and above us. Yet, in this case, I would submit, as a practical matter, is

nonexistent because there's no chance that we're ever going to get over 102 percent of the reserving requirements that my client held in assets in trust by the trustee.

So, the reality of the situation is that my client has the property interest in the trust assets. It also is an aggrieved creditor with respect to PBLA because PBLA guaranteed that there would be a requisite amount of assets in the trust, which is why we sought arbitration and obtained an award, and a judgment. So, that's how these parties all relate.

Now, if what people are concerned about with respect to subject matter jurisdiction is that the money first has to go into the trust before it goes to us, that's fine. The court can make that reservation if it wants. Then I think there would be no doubt, according to what I've heard here, that there's subject matter jurisdiction. I don't think that's necessary for the reasons we've already specified because my client cannot recover twice. And I think if you view it through that prism, there is no question that there is a conceivable effect and that is the standard here under **Cuyahoga** that originated in Pacor. It is an exceedingly lenient standard. That's what all the cases say. Now, often defendants in adversary proceedings don't like that it's exceedingly lenient, but it is what it is. This Court has very expansive jurisdiction over this matter.

Now, with respect to issues about whether somebody was pass-through entity. They just got the assets for a while, and

they want to argue that went someplace else. This really sounds like a 546(e) argument to me, that they're arguing about safe harbor and this is a hotly contested issue in this district and elsewhere. I haven't heard anyone come forward with the arguments for why it is they'd be subject to the safe harbor, by 546(e) would apply at all. Particularly, with respect to state law claims like we have going on here.

With respect to the issues of standing, again, I think this is a function of a lot of things we've talked about already in terms of the identity of the parties. We are an aggrieved creditor of PBLA. We have a judgment for over a half a billion dollars against PBLA. The fraudulent transfer here came from PBLA to transferees because what happened is that the trustee transferred the assets that had been held in trust first to PBLA, and PBLA transferred them to someone else.

Now, it's also true that in many circumstances, the evidence appears to show that that initial transferee transferred it again to someone else. And perhaps again and again and again. But that doesn't mean that our claim as a creditor of PBLA against that initial transferee is not valid. I'm sorry to say that I'm afraid we're going to have to continue to chase these monies down the chain, just like they had to do in Madoff and a bunch of other cases in this district that on the same ilk. I wish it weren't so, but it is.

With respect to the issues about applying the statute

of limitations, I'm reluctant to head down the path of talking about Rule 12, but I guess I have to. Statute of limitations is an affirmative defense. It can only be asserted in a motion to dismiss where all of the facts that are relevant are plain on the face of the complaint. What we've heard today from a variety of the arguments are facts that are absolutely not in the record, and certainly, not pled in the complaint. That's just not how Rule 12 works, let alone, Rule 15. So, what you're being invited to do is to engage in a very complex analysis about choice of law based upon facts that are not in the record, let alone pled. Then apply some state law, perhaps North Carolina, to come to the conclusion that North Carolina law would bar a claim. But in fact, if you look at North Carolina, North Carolina is very likely to apply a discovery rule.

There's nothing pled in our complaint about when we discovered these problems, because we don't think we need to plead that. And in any case, somebody would have to show that in order to show that he North Carolina statute would bar the claim. And in any case, if you apply the New York statute of six years, I don't think there's a single claim in this case that anyone is arguing would be barred.

With respect to the arguments made by Aspida on the Michigan proceedings, what we said in our prior brief and our motion to dismiss about that is that that circuit court in Ingham County, Michigan, Michigan Insurance Co., absolutely did

not have subject matter jurisdiction to strip our claims out of a noninsurance company that was apparently owned by an insurance company. That would be a controversial remedy in this district under the Code today given the current state of affairs about third-party releases. Let alone in an insurance case in Ingham County State Court where the statute at issue there doesn't purport to give the Court anything like that power. It does not have fraud avoidance powers. It does not have the right to give third party releases to entities who are creditors against the company in liquidation, let alone an affiliate of a company in liquidation. Moreover, we didn't get adequate notice and an opportunity to be heard. There's no personal jurisdiction over my client in the State of Michigan, and there's no question that the constitutional limitation of personal jurisdiction applies. So, there's a whole litany of reasons why that order doesn't have the effect that Aspida argues.

The issue there also raised about subject matter jurisdiction, we say in our papers that creditors, to the extent they exist, will be benefited by the (inaudible) of our claim. And Aspida is arguing, well, see, that doesn't matter here because there won't be any claims. We don't have any idea whether that's true, and we don't have any idea whether there will be a liquidation in Bermuda. The current proceedings in Bermuda are for a joint provisional liquidation. There has not been a filing by the JPLs to start the actual liquidation of

PBLA. Moreover, there has not been a time for creditors to come forward and articulate whether thy have a claim. So, I don't know whether there are creditors or there aren't. Or how much their claim would be or wouldn't be. So, that's all speculation. What I do know is that if anybody shows up and our claim for half a billion dollars is reduced, they'll benefit from it. And again, that's the conceivable effect test in **Cuyahoga** and in **Parmalat**, and I think there's no question that the creditors will benefit by us clawing back these monies that were conveyed in fraudulent conveyances.

Those are the issues that I remember being raised, and I'm mindful of the Court's patience and time and that lawyers talking longer than they should is usually not a good thing. So, I'm happy to take any questions that you have, Your Honor. And I'm very grateful for your time and attention.

THE COURT: I actually don't have any questions for you, Mr. Cameron. I got your reply. Okay. All right. I think I'm going to go ahead and provide a ruling.

So, I note, Universal Life Insurance Company which I'm going to refer to as the plaintiff or ULICO file a motion for leave for a second amended complaint. And I'm going to refer to that as the motion. Plaintiff filed it's original complaint on July 6, 2021 and filed it's first amended complaint on July 30, 2021. And I'm going to refer to the first amended complaint as the FAC. Motions to dismiss were filed by various defendants.

The motions to dismiss raised various issues, including this Court's subject matter jurisdiction, the failure to plead with sufficient particularity, and the applicable statutes of limitation by ULICO from seeking certain relief against certain defendants.

This Court held a conference on the motion to dismiss in January of 2022 where ULICO informed the Court that it would be filing this motion, seeking leave to filed a second complaint to cure defects in the FAC identified in the motions to dismiss. This Court entered a scheduling order on January 22, 2022 with respect to the motion. Objections to the motion have been filed by five different defendants or groups of defendants as applicable. And a reply pleading was filed by ULICO. The Court has reviewed all of the pleadings filed by the parties in the adversary proceeding, the cases cited therein, and considered the arguments made by the parties in today's hearing.

This Court must first address the issue as to whether the Court has subject matter jurisdiction with respect to the adversary proceeding. At set forth in the FAC, Private Bankers Life and Annuity Co., Ltd., which I'll refer to as PBLA, entered into reinsurance and trust agreements with ULICO on June 30, 2017, under which PBLA was to reinsure life insurance and annuities that ULICO provided to third parties. Under the agreement, ULICO provided the trust with sufficient assets to meet the statutory reserve requirements for the reinsured

policies. PBLA, under the agreements, had the right to manage the investment of the trust assets.

In the FAC, ULICO alleges that Greg Lindberg and his co-conspirators stripped the trust by monetizing its assets and transferring the cash from the trust first to PBLA, and then to other entities in the guise of debt instruments. See FAC, paragraph 9. ULICO and PBLA engaged in arbitration. The arbitration panel declared the PBLA had breached its contractual obligations and ordered PBLA to pay ULICO in excess of $524 million. ULICO petitioned the District Court for the Southern District of New York to confirm the arbitration award. The District Court confirmed the arbitration award and a judgment was issued on August 11, 2020.

PBLA filed a chapter 15 petition with this Court and this Court granted recognition of the Bermuda winding up proceeding pending in the Supreme Court of Bermuda. Also called joint provisional liquidation. PBLA is not a party to this adversary proceeding.

On October 5, 2021, ULICO and PBLA entered into a settlement agreement, which I'm going to reference as the settlement agreement. 29 USC §1334(b) provides that district court may exercise subject matter jurisdiction only over those cases arising under Title 11, arising in, or related to cases under Title 11. 28 USC §157(a) provides that the district courts may refer any and all proceedings arising in or related

to a case under Title 11 to the bankruptcy judges for the district. Plaintiff bears the burden of proving that this Court has subject matter jurisdiction over this action. See **Merhav Ampal Grp., Ltd. v. Merhav Ltd.** (**In re Ampal-American Israel Corp.**), 14-02385 2015 Bankr. LEXIS 2934 at *23 (Bankr. SDNY Sept. 2, 2015). Plaintiff asserts that this Court has related-to subject matter jurisdiction. In the 2d Circuit, a proceeding is related to a bankruptcy case where the outcome of that proceeding might have any conceivable effect on the bankruptcy estate. See **SPV Osus Ltd. v. UBS AG**, 882 F. 3d 339, 340 (2d Cir. 2018). See also, **Parmalat Capital Finance Ltd. v. Bank of America Corp.**, 639 F. 3d 572, 579 (2d Cir. 2011).

A chapter 15 case as has been previously noted in argument, does not create a bankruptcy estate at the time of filing, as it constitutes process that is ancillary to a primary proceeding brought in a foreign nation and concerning a foreign estate. Therefore, in a chapter 15 case, the conceivable effect test is applied to the foreign estate. See **Fairfield Sentry Ltd. v. Theodoor GGC Amsterdam** (**In re Fairfield Ltd. Inc.**), 10-03496 2018 Bankr. LEXIS 2324 at *18 (Bankr. SDNY Aug. 6, 2019). See also the **Parmalat** case previously cited at page 578. "There is no need to distinguish between estates administered principally in foreign forums and those administered principally in domestic forums."

A court may exercise related-to jurisdiction over a

proceeding that could alter the debtor's rights, liabilities, options or freedom of action and impact the handling or administration of the estate in any way. See **Celotex Corp. v. Edwards**, 514 US 300, 308, note 6 (1995). See also, **In re Ampal-American Israel Corp.** 14-02385 2015 Bankr. LEXIS 2934 at *21 (Bankr. SDNY Sept. 2, 2015). However, related-to jurisdiction is not without limits. Applying conceivable effect tests typically give rise to related-to jurisdiction in three circumstances in this district. See **Worldview Entertainment Holdings v. Woodrow**, 611 B.R. 10, 17 (Bankr. SDNY 2019).

First, when the outcome of a case would directly impact distribution to creditors. See **In re Fairfield Sentry Ltd.**, 218 Bankr. LEXIS 2324 at *19. Finding, related-to jurisdiction in adversary proceedings in which any recovery would directly increase the size of the foreign estate. Second, when third-.party non-debtor claims are enjoined because the claims might directly affect the results of the bankruptcy estate. See **In re Ditech Holding Corp.**, 606 B.R. 544, 626 (Bankr. SDNY 2019). Finding, related-to jurisdiction to grant third party releases of certain claims with litigation of the claims could impact the value of the estate. Third, when the case involves a third party with a reasonable legal basis for an indemnification or a contribution claim against the debtor. See **SPV Osus Ltd.**, 882 F. 3d 340-342. Finding, a potential contribution claim against the debtor gave rise to related to

jurisdiction over third party litigation.

none of the three factors described above which the 2d Circuit has found related jurisdiction present in this proceeding. PBLA is not a party to this action and PBLA's property it's not the subject of this action. A judgment in this adversary proceeding would have no effect on the value of PBLA's foreign estate assuming that the settlement agreement does not affect the analysis of the subject matter jurisdiction, which I'll address shortly. Nor will it impact the foreign bankruptcy race. Finally, none of the parties in this proceeding argue that there are any grounds for an indemnification what contribution plan against PBLA.

Resolution of ULICO's claims in this action would have no direct effect on PBLA foreign assets because PBLA is not a party to this action. PBLA's property is not the subject of this adversary proceeding. the connection between the main bankruptcy case and this action is diminished first and foremost by the fact that PBLA is not a named party. See Worldview Entertainment holdings, 611 B.R. 17. Finding, non-debtor claims are not related to the main bankruptcy proceeding because the outcome of non-debtor claims will not directly affect the bankruptcy race because the debtor is not a party to those claims. Moreover, but for the settlement agreement, there is nothing that requires ULICO to offset any funds recovered in this adversary proceeding against its claim and bring an

insolvency proceeding.

In addition, the property sought by ULICO in this action is property of the trust. See FAC at paragraphs 144, 152, 155, 157, 158, 162, 166. And therefore, the affect of a judgment would alter the liabilities of and relationship between ULICO and the defendants rather than between ULICO and PBLA. Thus, because PBLA is not a party to this action, and the property sought is that of the trust, no outcome of this proceeding will likely have a direct affect on PBLA's foreign estate.

ULICO argues that if it were to recover funds from the defendants in this action, then PBLA will not have to pay ULICO as much on its claim and will have more money to distribute to the other creditors. However, ULICO has a judgment for a specific amount, which is the amount of its allowed claim in the PBLA Bermuda insolvency proceeding. PBLA is liable to ULICO for that amount. The Court has reviewed both U.S. and Bermuda law regarding setoff and there does not appear to be a basis under either law for a triangular setoff. This is because ULICO does not owe PBLA a pre-petition debt. To be eligible for a setoff under Section 553 of the Bankruptcy Code, the owed by a debtor must be a pre-petition debt. The debtor's estate against the creditor must also be pre-petition, and the debtor's claim against the creditor and the debt owed to the creditor must be mutual. See **In re Lehman Bros.**, 458 B.R. 134, 139 (Bankr. SDNY

2011)

The two factors have satisfied first the amount owed by PBLA is a pre-petition debt, as is the unsatisfied judgment at which upon ULICO's claim against the Bermuda estate is predicated. And the judgment itself was entered pre-petition on August 11, 2020. Second, PBLA's alleged fraudulent transfer that ULICO seeks to recovery through this action occurred pre-petition in 2017-2018. However, the third element of mutuality is not present here because ULICO does not owe a debt to PBLA.

Bermuda Insolvency Law, like Section 553 of the Bankruptcy Code, contains a mutuality requirement when assessing setoff rights. The Bankruptcy Act of 1989, which governs personal bankruptcies and due to incorporation by reference in Section 235 of the Company's Act applies to corporate insolvency as well. Section 37 of the Bermuda Bankruptcy Act of 1989 provides, "where there have been mutual credits, mutual debts or other mutual dealings, between a debtor against whom a receiving order shall be made under this Act and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of the mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person is not entitled under this section to claim the benefit of any set-

off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him. Bankruptcy Act of 1989, Section 37.

Thus, there are no grounds for ULICO to setoff amounts recovered from the defendants against its claim against PBLA in Bermuda's insolvency proceeding.

Under the Bankruptcy Code, there is a provision that precludes a creditor from being paid more than 100 percent of its claim. The Court does not know if there is something similar under Bermuda Insolvency Law, but even if there were, it is the Court's view that the possibility that ULICO's recovery on its claim against PBLA in the Bermuda insolvency proceeding might have to be cut back because of the recovery in this action is not a sufficient basis for this Court to predicate related-to subject matter jurisdiction. The settlement agreement itself does not create a basis for subject matter jurisdiction because it post dates the FAC. It is well established that a court's jurisdiction is to be determined as of the date an action was brought. See **SIPC v. Bernard L. Madoff Investment Securities LLC**, 597 B.R. 466, 481 (Bankr. SDNY 2019). The time of filing rule assesses a court's subject matter jurisdiction based on the circumstances in existence at the time that the action was filed.

Though the time of filing rule has been primarily used

to assess the presence of diversity of jurisdiction, it has been held to apply generally in determination of federal jurisdiction including a bankruptcy court's subject matter jurisdiction. **Id.** at 482. In its omnibus opposition brief in connection with the motions to dismiss, ULICO asserts that the settlement agreement removes any doubt as to whether the Court has subject matter jurisdiction over this adversary proceeding and points to the following excerpt from the agreement. The JPLs acknowledge and confirm their view that the adversary proceeding impacts the JPLs rights and liabilities and that any recoveries by ULICO in that adversary proceeding shall inure to the benefit of the JPL as referenced in this agreement. The JPLs are therefore expressly of the view that this action relates to the bankruptcy court action as that term is understood under federal law.

However, this portion of the settlement agreement is insufficient to provide a basis for this Court to have subject matter jurisdiction because the agreement was entered into on October 5, 2021, which postdates the filing of the original complaint in this action, as well as the filing of the FAC. At the time that this action was commenced, the settlement agreement had not yet been signed and therefore cannot be considered in this Court's subject matter analysis.

The time of filing rule also provides and applies in the application of the conceivable effect test and provides that in assessing whether the Court has related-to jurisdiction, the

question about whether a proceeding has a conceivable effect on an estate is to be determined according to the facts as of the date when the action was filed. See **SIPC v. Madoff**, at page 482. The conceivable effect test does not require federal district courts to constantly revisit jurisdictional findings to determine whether the effect of the litigation on the bankruptcy court remains conceivable. This was affirmed by the 2d Circuit, 368 F. 3d 286 (2004).

The settlement agreement provides as follows. Any funds recovered in the adversary proceeding or the trust account shall be credited against PBLA's obligations under the judgment in the original district court action. ULICO contends that the current proceeding would have a conceivable effect on PBLA's liability because pursuant to the settlement agreement, ULICO will reduce it's claim against PBLA by any amount recovered in the present action. This contention might have had some merit if the action was filed after the settlement agreement took effect, however, that is not what occurred.

Accordingly, this Court finds that it does not have subject matter jurisdiction over the adversary proceeding. The Court knows that there are various other issues raised with respect to the motion, including the failure to plead with sufficient particularity, the application of the statute of limitations, and the futility of the granting of the motion and the amendment of the complaint. But this Court is not going to

address any of those issues with respect to the motion because of its ruling that it lacks subject matter jurisdiction. Accordingly, the Court denies the motion on the grounds that it lacks subject matter jurisdiction with respect to the adversary proceeding and will enter an order denying the motion and dismissing the adversary proceeding.

MR. CAMERON: Your Honor, may I ask a question?

THE COURT: You may.

MR. CAMERON: So, it's your intention to enter a final order finding that the court lacks subject matter jurisdiction. Are you going to address issue about diversity in that order or no?

THE COURT: I am not because as you pointed out to me, it doesn't mater. If I don't have subject matter jurisdiction under this, then as we discussed, then I don't have jurisdiction either under the reference because I've determined that I don't have 1334 diversity jurisdiction. And therefore, this complaint has to be dismissed because there isn't an ability for me to -- or you, for that matter, actually more appropriately, there isn't an ability for me to contact the District Court and say, this should be before you. We discussed that. But moreover, you don't have the ability to seek a withdrawal of the reference because there is no reference, as you yourself have argued appropriately. And as we've discussed, if there isn't a reference by virtue of it being a related-to matter, and it is a

diversity matter, then it is something that can't be withdrawn, and therefore there would have to be a dismissal of the action here. And if you determine to file another complaint in the SDNY or if you determine to file a complaint in the state courts in North Carolina or the state court in New York, all of that is possibly available to you. I'm not ruling in any way, of course, on the merits of the standing argument or any of the other things that have been raised here with respect to those actions. I'm simply saying that I don't have jurisdiction under 1334, and therefore, as you noted yourself, there isn't an issue with my having diversity jurisdiction, and there isn't a withdrawal of the reference possibility. So, I think that's what I'm going to rule on and I'm going to dismiss the action based on that. As you yourself noted, if you were going to pursue a diversity action, you would need to commence it in SDNY itself in the District Court.

MR. CAMERON: Thank you, Your Honor.

THE COURT: All right. Thank you all. I appreciate everybody's hard work on their papers, and it's an interesting issue, of course. There are lots of issues in this case, and obviously not one that's been actually ever decided in the context of these particular facts in the United States. But that seems to be the way things go in this court. And so I just want to thank everybody for all their work and their appearances today, and unless there's anything else, court is adjourned.

ALL COUNSEL: Thank you, Your Honor.

THE COURT: You all my be excused. And have a nice day.

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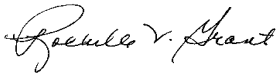
CERTIFICATION

I, Rochelle V. Grant, approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the matter of 21-01169, held on 4/14/22.



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